UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA STATESVILLE DIVISION 5:10-cv-7-RJC

PATRICK RICARDO SMITH,)	
Plaintiff,)	
v.)	<u>ORDER</u>
DOUG WALKER, et al.,)	
Defendants.)	
)	

THIS MATTER is before the Court on Plaintiff's motion for enlargement of time to file a notice of appeal from the Court's Order granting Defendants' motion for summary judgment. On February 28, 2012, the Court entered an Order granting Defendants' motion for summary judgment on the grounds that Plaintiff failed to carry his burden to raise a genuine issue of material fact as to his claim for deliberate indifference to a serious medical need. (Doc. No. 47 at 7). The Clerk entered Judgment that same day. (Doc. No. 48).

On March 7, 2012, Plaintiff's motion for leave to file "late notice of appeal" was docketed by the Clerk of Court. (Doc. No. 49). Plaintiff seeks an additional sixty (60) days to conduct "independent research for setting forth the basis of an appeal." (<u>Id.</u> at 1). Pursuant to Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure, Plaintiff must file his appeal with the Clerk of Court within 30 days of entry of judgment. Plaintiff filed his motion to enlarge within the time allotted for filing an appeal and the Court, pursuant to Federal Rule of Appellate Procedure 4(a)(5)(i) and (ii), may extend the time to file a notice of appeal if, regardless of whether the motion is filed before or during the 30 days after the time prescribed by Rule 4(a) expires, the party shows excusable neglect or good cause.

The Court has considered Plaintiff's motion and concludes that good cause exists to

enlarge his time for filing an appeal. However, the Court is constrained by the plain terms of

Fed. R. App. P. 4(a)(5)(C) which provide that the court may only extend the time for filing a

notice of appeal no more than 30 days from the prescribed time for appeal or 14 days after the

date of the order allowing extension was entered, whichever is later. Judgment was entered in

this case on February 28, 2012, and Plaintiff's notice of appeal must be filed by March 30, 2012.

The Court finds that Plaintiff's time for filing an appeal should be extended up to and including

April 30, 2012.

IT IS, THEREFORE, ORDERED that Plaintiff's Motion for Extension of Time, (Doc.

49), is **GRANTED**. Plaintiff shall have up to and including **April 30, 2012**, to file an appeal of

the Order granting summary judgment with the Clerk of Court.

Signed: March 27, 2012

Robert J. Conrad, Jr.

Chief United States District Judge

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